







J. Yalbot M.D.

THE

HABITUAL CRIMINALS BILL,

AND

REFORMATORIES FOR ADULTS.

BY

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AND

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Printed by special request for the use of Members of the House of Commons.



Reformatory and Refuge Union,

24, NEW STREET, SPRING GARDENS, S.W.

THE following Papers were read at the recent Conference of Managers of Reformatory and Industrial Institutions, called together by the Council of the Reformatory and Refuge Union, and are issued in anticipation of the other papers, together with a Report of the Discussion, at the special request of several Members of the House of Commons, in order that they may be perused before the Bill is considered by the House.

CHARLES R. FORD,

Secretary.

REFORMATORY AND REFUGE UNION,

24, NEW STREET, SPRING GARDENS, S.W.

NOTE.

THE numbers of the Clauses referred to are those of the *last* copy of the Bill ordered to be printed by the *House of Commons*, April 12th, and are, after Clause 7, (through the omission of original Clause 8 of the House of Lords' Bill), one less in number than in the Bill ordered to be printed April 6. Thus, that which was Clause 10 in the copy printed April 6, is Clause 9 in the Bill of April 12.

THE HABITUAL CRIMINALS BILL.

MR. T. BARWICK LLOYD BAKER, of Hardwicke Court, Gloucestershire, read the following paper, on the "Supervision of Criminals, with special reference to the Habitual Criminals Bill."

The discussion on the Habitual Criminals Bill at this meeting may probably recall to many of my friends the days now long passed when I was laughed at as being too hopeful of the results of our Reformatory work, then only commencing. But almost every prophecy I then made has proved untrue, inasmuch as my most sanguine expectations have been exceeded.

I must confess I now augur greater results from this bill as affecting Adults, than I did from that which has so successfully reduced the number of juvenile offenders.

It appears to me that this Bill is like in principle, and will produce similar results to the Reformatory Bill of 1854. Some differ from me, as believing that those results were simply caused by the Reformation of the individuals committed to us. But this could not have been, because between 1856 and 1860 the annual number of juvenile convictions of England and Wales fell very nearly from 14,000 to 8,000, while the number annually sent to us but little exceeded 1,000. For every one boy whom we had the chance to reform, five others were prevented from commencing theft. The simple cause of this was, and could only have been, the not allowing young thieves to obtain practice and skill sufficient to instruct others in crime: for thieving, as a business, requires efficient leaders and a skilful training.

An Habitual Criminal is a trained person, and I believe there is no more perfecting school than that into which offenders are almost forced by frequent recommitments with short sentences. These—at least in the higher class of crimes—it is the very object of the Bill to prohibit.

It is difficult to estimate with much accuracy the proportions of first and second convictions, but in the later reconvictions we are more safe. In the year 1867 there were reported—

98,775	persons	convicted	for a	first time.
19,313	"	"	"	second time.
8,369	"	"	"	third time.
4,799	"	"	"	fourth time.
3,169	"	"	"	fifth time. &c.

If this were quite trustworthy it would follow that of those who are once punished not quite one in five relapse, but it would be safer to take it as one in three. But of those twice convicted nearly one-half are found guilty a third time: of these more than half offend a fourth time—and of these nearly two-thirds a fifth. These statistics of course do not pretend to perfect accuracy, but a close examination of prisoners' antecedents shows that they are much nearer the truth than we should at first have supposed.

But now let us turn from the past to a more hopeful future.

I do not undertake to say that I agree with all the provisions of this new Bill.

I think that some of the measures are unnecessarily stringent, and that others are not as strong as I should wish. But though I think that some alterations might be made with great advantage, I feel sure that the Bill, as a whole, will have a greater effect in the reduction of crime than any measure now on record. Allow me to go through the Clauses, and to note those which I imagine capable of improvement.

The first 3 Clauses are simply preliminary.

The 4th relates to what have commonly been called ticket-of-leave men. It enables any policeman, if authorized in writing by the Chief Officer of Police of the district, to apprehend any ticket-of-leave man, and to bring him before any Magistrate, and if the prisoner cannot shew to the Magistrate good reasons for believing that he is not getting his living dishonestly, the Magistrate shall remit him to Penal Servitude.

This is carrying out in the main a sound and good principle. If a man has been by a competent Court sentenced to Penal Servitude for a certain period, but if before that period is past he be let out, with the knowledge that it is only on trial, he is in justice bound to shew that he is living honestly; and if he cannot do so the greatest facilities ought to be given for returning him to the prison. Much has been said on the hardships of betraying the prisoners' previous life. It has been said that unless his secret be carefully guarded he will be unable to procure any honest employment, and be driven back to crime.

I have thought long and deeply on this subject, and I must confess that my experience has only strengthened my original impression: viz., that it is neither honest nor expedient to conceal a man's antecedents such as they may have been. When we first began the Reformatory work I differed from several of my friends on this point; and I must allow that at first my determination to send no boy from our Reformatory to any service without a full explanation of his character, rendered the disposal of them, for a year or two, more difficult than it would otherwise have been. This was not unexpected. I had long known by experience that I could sell an unsound horse much more readily if I concealed his defects; but I did not and do not yet believe that such a course would pay well in the end.

But by sending out all our boys with their characters unconcealed it soon became apparent that most of them did turn out well; the truth prevailed, and the prejudice was subdued.

But you, gentlemen of the Reformatory and Refuge Union, are the last body on whom it would be necessary for me to press such arguments. You have yourselves given probably the most triumphant refutation on record of the statement, That those who had once gone wrong are unable henceforth to gain honest employment. You will correct me if I am wrong in saying that out of above 2,000 discharged prisoners referred to your Discharged Prisoners' Relief Committee, not one has been thrown back on the world without the means of earning an honest livelihood; although pains have been taken that their antecedents should be known, and that none should obtain a place of work under false pretences.

The men who are remitted from penal servitude on ticket-of-leave, under surveillance, I believe generally do find work. I know that all do so in my own County, although their characters are never a secret to their employers; and I believe that they are much safer when so known than they would be if they had gained their place by a false character and were trembling lest the truth should be found out.

But as I have said the 4th Clause of the Bill proposes that any licence holder may be taken before any justice of the peace, and if he fail to make it appear that he is not getting a livelihood by dishonest means the justice shall recommit him to penal servitude.

I confess that this is a provision that I should like to see altered. I believe as highly in the uprightness and in the general good sense of my brother Magistrates as most men, but I hardly like to thrust on *any one man* the duty of committing to penal servitude for some years. I do not at all think that the power is likely to be over exerted. I think it far more probable that a Magistrate would dislike to assume so large a power, and would act too little rather than too much; but either would be objectionable; and I should be glad to see the Bill so amended that the Magistrate before whom he was taken should commit him for trial at the Quarter Sessions, and that the latter Court should decide on his remission to Penal Servitude.

The 5th, 6th, 7th, and 8th Clauses establish a Central Office where a register shall be kept of all licence holders, even though they change their residence from one County to another; and in case of anyone absconding the Central Office will communicate with other Counties for his recapture. This is a valuable measure.

The 9th Clause begins the second part of the Bill relating to Habitual Criminals. By its provisions if any person convicted a second time of felony, or uttering false coin, or obtaining goods by false pretences, the punishment is left to the Court as heretofore, but in addition to that punishment he is placed for seven years under the supervision of the Police; and during such seven years he may be taken by a policeman before two Justices, or a Stipendiary Magistrate, and if he fail to make it appear to them that he is not getting his living by dishonest means, or if he be found under certain suspicious circumstances, he may be committed to prison for not exceeding 12 months.

I confess for my own part I hardly see the necessity of this Clause. So far as my own experience has gone I think that a man only twice convicted will seldom be either a skilled or a dangerous Habitual Criminal. Still so far as it works I believe it will be almost wholly for good. It is said that it will be difficult for him to prove that he is gaining an honest living. This will not be so. The policeman, if he be good for anything, will know somewhat of his habits, and be able to estimate pretty nearly his expenditure. The prisoner can have little difficulty in referring to the masters for whom he has worked, and showing whether he has earned enough to support him.

But in two points I should like to see the Clause altered. 1st.—The main principle of the Bill is that punishment should not be simply retaliative of the last offence, but cumulative, pressing with greater severity as the criminal shows by a repetition his intention to continue in crime. Lord Lichfield, evidently taking this view, proposed an amendment in the Upper House that the punishment for a second offence should be not less than 6 calendar months.

I confess I should have been glad had this been carried.

2ndly.—I doubt the wisdom of calling on two Justices or a Stipendiary Magistrate to commit for 12 months' imprisonment. I would rather see it run, "On conviction before two Justices or a Stipendiary for 3 months, or on conviction before a Quarter Session or Assizes for 12 months."

Clause 10 carries the work of the Bill a step farther. If the offender will not be warned by his punishment or restrained by the watch over him, but commit a third offence, he *must* be sentenced to penal servitude for 7 years, and for the

remainder of his life will be liable to apprehension without warrant, on suspicion, and committed to prison for not exceeding 12 months.

This is a measure which I have urged publicly ever since 1856, (and privately for I know not how long before that,) *as a general rule*. I am convinced that it will have an enormous power in the extinction of habitual crime. Yet as the Bill stands I fear its being weakened by grasping at too much strength. We see frequent cases of men slightly weak in intellect who would have neither the will nor the power to become habitual criminals, yet who cannot help occasionally stealing some trifle. If such a one has stolen a spade in '63, a loaf of bread in '67, and half a peck of potatoes in '70, but at all other times has lived a quiet and inoffensive life, I fear that the law enjoining penal servitude for him would be evaded. The Chairman *would* sum up in his favour; the jury *would* not convict, and the public *would* be aggrieved if he were so punished. I think that the difficulty might be met by introducing a few lines, "but if the Judge or Chairman on consideration of the 'slight nature of the offences shall deem such punishment excessive, he may report 'the circumstances to one of Her Majesty's Judges appointed for the purpose, who 'shall have power to commute such sentence.'" This would prevent any case of over harshness with very slight trouble. Such cases of application would be rare and one Judge would be able to carry out an equal measure of justice through all the Counties of England. Even if in one item an example of uniformity could thus be introduced I believe it would tend much in time to produce somewhat more like uniformity in our other sentences.

In the same clause occurs the same measure as in the previous, viz., that the offender after such third conviction if found under circumstances of suspicion, may be sentenced to 12 months' imprisonment by two Justices or a Stipendiary Magistrate. As I have before said, I do not like throwing the responsibility of a 12 months' sentence upon a Court of hardly sufficient weight to bear it. And here I think another alteration is needful. On the cumulative principle, successive punishments ought to increase in severity, and when a man has had seven years penal servitude, it seems useless to return him to the common Gaol. I should like therefore to add that he may be committed "on summary conviction before two Justices to imprisonment not exceeding three months; or before Quarter Sessions or Assizes, to penal servitude not exceeding seven years."

Before leaving this Clause you must pardon my again saying that I believe it will turn out to be the most important measure for the Repression of Habitual crime that has ever been passed.

The 11th Clause touches one section of those who have been hitherto termed rogues and vagabonds. It has long been enacted that every person found in or upon any dwelling-house, warehouse, &c., for an unlawful purpose, or every "suspected person or reputed thief being found anywhere with intent to commit felony shall be deemed a rogue and vagabond, and may be committed to prison for 3 months." The present Clause seems strongly to urge the justice to commit on reasonable suspicion without any very definite facts. It is an unusual recommendation for the law to make and it is certainly against all our previous ideas, yet I have little doubt that in practice it will be found that it is not exceeded, and that it will check crime.

The 12th enacts that any person who occupies any lodging-house, beer-house, or place of public entertainment and knowingly harbours thieves or suspected persons, or allows them to meet there shall be liable to a penalty of £10, and to be called on to find sureties of £20 for good behaviour for 12 months, and any licence for keeping

such house will be forfeited. On his second conviction for such offence he shall for two years be disqualified from renewing such licence. Moreover, if two such convictions take place within two years on the same premises it shall be deemed that the owner of the house is careless as to his tenants, and the premises may be disqualified for such a licence for 12 months.

The 13th Clause refers to a new class, viz., the receivers of stolen goods, and enacts that any person who has been previously convicted of any offence involving fraud or dishonesty if found in possession of goods which are proved to have been stolen by any one, shall be considered to have received them with a guilty knowledge, unless he can bring proof that he received them under circumstances which would make it likely that they were come by honestly.

I do not myself expect very much from this clause. Many receivers I fear have never been convicted (though richly deserving it), and therefore would be untouched by it, while those who have been twice or oftener convicted would be so far under watch of the police that their receiving trade would be worth little. Still the measure will do some good and can do no harm.

The 14th Clause raises the penalty for an Assault on a Policeman to £20, or in default 6 months' imprisonment. I cannot but think that in such cases both the law and the will of Magistrates to act requires increase. In the case of a small assault the punishment may be sufficient, but in cases of highly aggravated assault 5 years' Penal Servitude is the utmost punishment. It was reported in the *Times* of January the 8th that three men, Summers, Bennet, and Smith,—ten and twelve times previously convicted—assaulted two Constables, one so violently that he was off duty for a long time; and the judge sentenced one to the utmost penalty for an assault, namely, 5 years' Penal Servitude; and the other two to 2 years' imprisonment. Had Summers stolen a loaf of bread, after two slight previous convictions, 7 years' Penal Servitude would henceforth be the minimum punishment. For nearly murdering a Policeman—after a long career of crime with brutal assaults—5 years is the maximum. How long is this to remain?

The 15th and last Clause grants some technical facilities for justice, and thus end the chief features of the Bill.

Forgive me if I say that I heartily hope that two Clauses may either be added to this or introduced in a separate Bill, which I believe would complete its objects, but without which two evils would be left untouched and the efficiency of its action crippled.

The Criminal Justice Act in giving power to Petty Sessions to deal with certain felons has done much good in supplying speedy and cheap justice, but it fails in two points.

1st. Its distinctions are technical and unreal. A Petty Sessions can try a case of stealing not exceeding 5s. value; but to try a case of higher value a prisoner must be committed to two Sessions or Assizes. On the other hand, in some cases of misdemeanour, a single Magistrate may commit to prison for 6 months. This is absurd. The limit on the action of a court should not be regulated by the value stolen but by the power to punish. If a man be guilty of a very slight offence it is better for him to be tried by a single Justice and committed for 3 days, than to be detained 7 days till the Petty Sessions arrive. It is better to be committed by the Petty Sessions for a month than detained two or three months to be tried at the Quarter Sessions. But to inflict more severe punishments a higher court should be used.

2ndly. Much evil has arisen from summary jurisdiction in the cases of prisoners whose antecedents are unknown. It is supposed to be the first offence, and a short sentence is inflicted; but on arrival at the gaol the prisoner is recognised as an old offender who deserved a heavy sentence. I knew a tramp found breaking a window of a Silversmith's shop. He was not known,—was summarily committed for one month, and on arriving at the prison was recognised as a man who ten years before had broken a window in the same shop, and stolen a large amount of Jewelry, and had been sentenced to 10 years Penal Servitude, from which he had only just returned.

These two defects in our present practice might be cured by a Clause. "That any Magistrate may determine every case, provided, 1st., that the prisoner's antecedents be known for two years, and that no previous conviction have taken place, and 2nd., that the sentence do not exceed one week. That any Petty Sessions may determine any case where the antecedents be known and the sentence do not exceed three months. But that if a heavier sentence is required, or the Prisoner can prove no antecedents, (allowing time for the latter by a remand) the trial be referred to a higher Court." Were such a measure carried, old offenders would not escape with short sentences from being unknown, and the jurisdiction of each court would be limited by no mere technical rules of felony or misdemeanour, but simply by the amount of punishment which each would inflict.

But one other crying evil remains to be remedied, viz., the constant repetition of short punishments for slight offences. Few people are aware of the dreadful and demoralizing degree to which this is in some places carried. The *Times* gave a case of a woman called Cast Iron Poll who had been 53 times in prison. But there were last year committed to Liverpool Gaol 111 women, each for above the thirtieth time, and one 121 times. The present Bill has adopted the cumulative principle of punishment. This may be carried out by simply enacting that "a fifth, or if you please, a tenth and every following misdemeanour or offence of any kind punishable with imprisonment, should be henceforth deemed and be punished as a felony."

With these few amendments I believe the law would reduce crime to a degree which we scarcely as yet dare to contemplate, but even in its present state, or if the clause ensuring seven years' penal servitude to *nearly* every third felony be fairly carried out, I have no doubt that the proportional reduction of crime among men would ere long equal that effected formerly among boys. That, out of 14,000 annual convictions, saved 6,000 juvenile offences. At the same rate it is quite within possibility that this measure may reduce the 137,000 crimes and offences in England and Wales, by 50,000 a year. The possibility of such a result is sufficient to claim for this Bill a higher importance than that of any of our day in the legislation on Crime.

Mr. HENRY CARTWRIGHT, Governor of Gloucester Gaol, contributed the following paper on "Reformatories for Adults," which in his absence was read by Mr. CHARLES R. FORD.

In enquiring into the efficiency of our present system of punishment by imprisonment our investigation is naturally directed to the results shown in the return of repeated convictions of the same people. From this it is gathered that 23 per cent. of the persons who have during the past five years been confined in the

local prisons have renewed their acquaintance with the interior of those establishments on account of subsequent breaches of the law.

It would be incorrect however to infer that the number of hardened offenders forms any but a very small proportion of the population, because 75·8 per cent, of those who have been a second time convicted have not been convicted a third time, and the fact of a man's having committed two offences in a life-time against the property of his neighbours cannot warrant his being included in the category of incorrigible transgressors.

There does exist, however, the rather formidable residuum, composed of persons who require to be dealt with in a different way to that pursued under our present system of management, if they are to be saved from their unfortunate and lost condition, or prevented from preying upon the community at large.

It must be admitted, even though it be with regret, that the present penal treatment has no satisfactory influence in reforming the moral tone, or, in inducing a return to honest life of this section of the criminal class. The habits inculcated by prison confinement, the artificial and enervating effects of the arrangements necessary to secure health, and avert undue suffering when large numbers of men have to enter into the competition of the active labour market, while the trades taught in prisons are almost unavoidably such as the liberated men cannot practise. The Prisons Act of 1865 has effected a great improvement in our criminal management by the assimilation of practice throughout the country, and by the requirement of compulsory industry, but it has failed where principles of progress were lost sight of. By compelling all prisoners to undergo for an arbitrary period a description of labour which causes a hatred of work, it depraves moral feelings, and arouses an antagonism in their minds to the appeals afterwards made to their better feelings. Without attempting to discuss in this place the baneful influence of the Crank, the Tread-wheel, and work without useful results inflicted solely for punitive objects, we may ask whether they and the whole plan of prison punishment would not be more judiciously reserved as an alternative infliction in the cases of failure of, or wilful resistance to a reformatory scheme of instruction and industrial training, analogous to that now practised with the most beneficial results in Reformatory Schools and the Intermediate Prisons of the Irish Convict directors.

Now we find from a careful collation of the Home Office Returns that of the people who pass through the County and Borough Prisons of England and Wales about two-thirds return to their normal occupation and are not again committed to prison; and one-third either have instant recourse to dishonest practices, or oscillate on the line between vice and honesty in the struggle to gain an irregular living by infractions of law while escaping its punishments. With the larger proportion of two-thirds a single infliction has sufficed to correct error, or to impart such a fear of breaking the law as to keep them afterwards clear of legal offence.

It appears that of 84,882 persons sentenced to imprisonment in one year, 51,904, or 61·1 per cent., underwent not over one month's confinement: of longer sentences there were, 4,790 over six months, of which number 1,312 were over one year, besides 2,016 sentences to Penal Servitude of various terms.

Taking for granted therefore that these longer sentences and repeated convictions are evidence of greater turpitude, and leaving out of present consideration the prisoners undergoing Penal Servitude in the Convict Prisons, we find about 5,000 criminals whom the existing management of Local Prisons has entirely failed to restrain from a vicious career, and who are gradually merging into the class of

Penal Servitude Convicts. The extent to which they are the victims of neglected education, or early perversion, is shown by the facts that only 3·5 per cent. of their whole number can read and write intelligibly, while 9,000 inmates of prisons in the year are under sixteen years of age.

Ignorance and absence of early training being the chief causes of the gross degredation of this body, and the Local Prisons proving manifestly inadequate to effect any satisfactory improvement in their moral condition, it is but just that some more salutary provision should be devised to control the evil. A very great number of these people are unfitted to take care of themselves; and when unrestrained by stronger influences than their own wills, are impelled by some moral obliquity, a perverted power of judgment, or the absence of any mental discipline, to the commission of acts resulting in injury to the property or persons of others, and their own necessary loss of liberty. The fact is, that however truculent this class becomes from the possession of physical ability, in mind they are but immature, and need a mode of treatment adapted to their condition. We have such a mode presented in the system pursued with undoubted good results in the Reformatory Schools, and ought to adopt the same principles in dealing with the troublesome class we are considering. Whether such principles be brought to bear in establishments styled Adult Reformatories, Intermediate Prisons, or Licenced Prisoners' Homes, matters little; but a system which has been successful in the one case should be utilised in the other.

Such institutions would remove from the artificial life of a Prison men who evinced a disposition to improve their condition, and as agricultural work would be most readily made the means of employment, a training would be obtained qualifying for future maintenance.

A supervision carried out by Reformatory Directors, aided by the Police, would be far more likely to prevent relapses in vicious habits than the supervision now proposed by the Police alone. From the Adult Reformatories men might be placed out in service with employers selected by the Directors, under agreements of labour for one or two years, and thus give the advantage of the guidance of another party interested in their good behaviour. Misconduct by prisoners would entail relegation to their previous condition in the Reformatory or even a return to the Jail, and the possession of the power of inflicting this would invest the supervision of the Directors with great weight.

Thus a man sentenced after repeated offences to six months' imprisonment and seven years' supervision, would pass through a local prison and be attached for seven years to the Reformatory and borne on its Rolls or Registers. He would not necessarily pass this period under confinement, or even under any physical restraint, but after being trained in the Reformatory for a period varying from six to eighteen months until fitted for employment in ordinary life, he would be put out in service but remain under the guardianship of the Reformatory authorities.

A distinction is recognized as necessary between prisoners under long and under short sentences in France, where all who are condemned to over one year's imprisonment are removed from the departmental Prisons to the "Maisons Centrales." By the establishment of Adult Reformatories the local prisons of this country might in like manner be relieved from a class which they confessedly do not and cannot benefit, while the number of persons who under such a charge would require to be dealt with is not too large to be manageable. Three Reformatories with accommodation for 500 each, would in all probability prove ample. These institutions would

bear on their Registers an annual average number of about 5,000 persons, but not more than 1,500 would necessarily at any one time be under training within them.

The success of such institutions would in all probability induce the Government to restore to conditional liberty through their agency, the prisoners who have hitherto been liberated on Licences or Tickets of Leave, and by so doing secure for the prisoners a responsible supervision guided by feelings of interest in their welfare.

If the "Habitual Criminals Bill" of the present Session be brought into operation with judicious management on the part of the police and the new officials to whom the registration and direction of the criminal or "suspects" are to be entrusted, a very considerable improvement will be attained by protecting the country from practised and professional thieves. But it will be an unavailing task merely to watch the criminal class, and to administer prohibitions against their committing suspicious acts, unless at the same time they are shown what they ought to do, and are instructed how to do it; this would be manifestly out of the power of the police department which could merely act repressively, and therefore the Bill does not and cannot meet the object now advocated, though it no doubt would prove a valuable auxiliary. The publications issued from time to time by that zealous labourer in the field of healthy philanthropy, as distinguished from sentimental philanthropy, Mr. Barwick Baker, upon the results of Reformatories for Boys, afford the strongest arguments in favour of similar institutions and regulations for those of an older growth. He has shewn that crime has been diminished by cutting off the leaders and teachers of crime, by instructing the rank and file in something better than a predatory life, and by imparting a knowledge of right and wrong to the ignorant and dark minds of the victims of our social condition.

The principles that have secured unequivocal success when applied to juvenile wrong-doers will, being just and right, accomplish the same results if applied to men. Supervision of "suspects" will fail unless accompanied with necessary training and education, and if our present prison system be not superseded by Adult Reformatories, we must rest content with palliatives of a disease which may prove uncontrollable in some season of national adversity.

MR. HODGSON BARROW, M.P.

I agree with the remarks of Mr. Baker almost entirely. I am quite satisfied of the inconvenience of committing prisoners for a length of time to our common gaols; and also that it is as desirable in the case of adults, as in the case of children from Reformatories, to introduce them to society after a previous amount of trial. I am quite sure that the first commitment of any individual, except for a very serious crime, should be for a very short period, in order that he may not acquire an habitual acquaintance with prison—entirely destroying the effect of it in a very short time. Agreeing, therefore, so much with the expressions which have been used by Mr. Baker, I can only express my wish to have an opportunity of examining the paper in print at leisure—particularly before the discussion shall arise upon the Habitual Criminals Bill.

THE EARL OF LICHFIELD:

I cannot help thinking that the Bill to which the paper just read will call attention, is capable of very great amendment, and indeed, as it stands is very imperfect in all respects. I wish to note one or two points referred to by Mr. Baker, and the

first, I should like him to give some further explanation upon is this:—if I understood him aright he said that he did not think it wise to give the power of sentencing to penal servitude to one justice. I should be very glad if he would explain to me how he considers that the clause will make any alteration with regard to the present law.

Mr. BAKER :

Under the 4th clause if a man is released we will say two years before his term is up, he is then under suspicion the whole term until it is expired, and if he is taken before a magistrate and found guilty of any offence, or, under the new state of things, if he is not able to prove that he is living honestly, the magistrate may re-commit him to penal servitude for two years. Now I do not like to put so important a weight of power as that upon one man. It is not that I am afraid of its being over exerted; but I am afraid of its being under exerted, because a Stipendiary Magistrate, or even magistrates at petty sessions would hardly like to take upon themselves the responsibility of returning a man to penal servitude for two years.

The EARL OF LICHFIELD :

It is certainly a very different thing, giving power to the magistrate to sentence a man to two years penal servitude, and merely giving power to the magistrate to sentence him to be recommitted for the remainder of his sentence; but it appears to me that there is a very considerable difference of opinion as to what an habitual criminal is. We heard a paper by Mr Cartwright, of the Gloucester Gaol, read, in which it does appear that of the persons who are put down in this Bill as habitual criminals, certainly not more than one third at the very outside can really be classed as such. Knowing as I do the very trifling offences for which in many cases children are brought before the magistrates, particularly in my own county of Staffordshire, such as stealing coal and that kind of thing, I suggested an alteration in the House of Lords, which I hope will receive some consideration in the House of Commons, as to whether it is desirable that offences committed under the age of 16 years should count as first offences at all, unless such offence had been punished by a sentence to a Reformatory or Industrial School. If this were adopted it would prevent a child being put into the class of habitual criminals. With regard to what Mr. Baker has said upon the subject of leaving some discretion to the judges in the case of a third conviction where a sentence under this Bill will be seven years' penal servitude at least, Mr. Baker tells us that he is strongly impressed with the difficulty of laying down hard and fast rules that all persons upon a third conviction should be thus inevitably sentenced, and he suggests that it would be better at the discretion of the magistrate that the case should be referred to one of the judges.

Now I object to this proposal altogether, because, whether it is the Home Secretary or one of the judges he would be perfectly incapable of judging of circumstances which were brought under the notice of those who were present at the trial. I am certain that if you leave it to the discretion of anybody, by far the best way is, to leave to the jury to decide as a fact whether the man is an habitual criminal or not, that is to say if any discretion is to be left at all. One of the most important parts of the whole Bill is Clause 10, which refers to the circumstances under which previous convictions may be proved. Not only will it be most difficult to carry it out, but it has this very great objection, that at the same time that you are inflicting much more severe punishment than has ever before been inflicted upon previously convicted

offenders, you are relaxing the law so far as regards the necessity of proof of the identity of the person so to be sentenced. It appears to me that, if anything, you ought to give greater security against the possibility of mistake as to the identity of the prisoner, than there was before. It appears, too, absolutely necessary that some better machinery should be brought into play for ascertaining the previous character of the prisoners when they are brought before the magistrate. At present a prisoner when he goes to gaol is there often recognized as having been previously convicted, and what we want is, that when there, he may be brought before any magistrate and upon sufficient proof of his identity he should thereupon have awarded to him an additional sentence. Some such machinery is necessary to secure the recognition of previously convicted offenders. I know that in our own county gaol no less than 250 persons in the course of one year came back to that gaol sentenced by the Magistrates, and are recognised as having been previously convicted, and in every one of these 250 cases it is perfectly clear that they ought not to have been dealt with by the Magistrate at all, but ought to have been sent to the Quarter Sessions. I am very much disinclined to adopt so expensive a machinery as that of bringing all these cases before the Quarter Sessions, or even remanding them. I should much prefer the identification in gaol upon the prisoner's return, and I think such a plan might be carried out so as to secure almost to a certainty the identification of the prisoner who has been previously convicted.

Dr. MACKENZIE, Provost of Inverness:

Having been for over forty years upon the bench, I can testify that scarcely anything can be more miserable to a Magistrate than having to commit over and over again the same persons to gaol without the slightest possibility of doing them good, but rather with the certainty of making them more hardened than before. In Leghorn, in Italy, and in Rome, the well known ticket of leave people, as we call them, wherever they are found out of the bounds and rules of the police after sunset and before sunrise, are taken away quietly and put in gaol out of the possibility of doing mischief. If we had this power in this country we should have a great deal less trouble than we have at present.

LORD HOUGHTON:

There is one advantage connected with this Bill that if it passes the House of Commons it will be found so inconvenient, and I think so impossible to work, that it must bring the general subject of prison discipline and the moral effects of our present system of prison confinement so strongly before the public that it is quite possible it may be the beginning of a very great reformation. The main principle of the Bill is the power to be exercised over suspects. We never had such a word before, but it has now become vernacular. The minor principle of the Bill is the mode proposed of dealing with these suspected persons. I have been informed by several police Magistrates and by several Judges that they do not see their way clear to deal with prisoners under this Bill. There is one part which deals with what are called habitual criminals, and which leads to a result that bears very much upon the subject of the interesting paper of Mr. Cartwright, namely, that these suspects are to be taken up and imprisoned for a year, that is to say, we are to pay the expense of taking care of these people for a year longer than we now do. But there is nothing stated in the Bill as to what is to be done with them at the end of that year. Are they to go out again and then the next week or two to be

committed for another year, and so on for the rest of their natural lives, or is there to be an attempt at anything like a reformatory system which shall in some degree prevent their passing this annual sort of examination and imprisonment? The application of the Reformatory system to adult criminals will, I think, be supported by this country through the action of this Bill, because when we get to taking up not only all persons guilty of crime, but also all persons suspected of crime, I think the public feeling will revolt against the notion of simply imprisoning them within walls and then turning them out not only without any effort at reforming them, but also having taken away from them that respectability which might have had a tendency to keep them from crime. We have for many years found this system to work well at our Wakefield Industrial Home; and I believe that by very little energy an establishment of the same kind might be connected with every gaol in this kingdom. There is no doubt a necessity for some larger course of action, and something such as Mr. Cartwright has proposed.

Mr. ARTHUR SPERLING :

The expression, "habitual criminals," is already before us in the Act called the Vagrants' Act. It is well known that an offender after a certain number of convictions, becomes an "incorrigible," and is dealt with accordingly. I would venture to suggest that some power analagous to this should be attached to the Habitual Criminals Bill, and that they should be brought up, and if a magistrate considers them to belong to that class, he should have power to remit to the Quarter Sessions, in the same way as vagrants are now remitted under the Vagrants' Act, and also dealt with accordingly. The fact might then be submitted to the jury. The magistrates of course would take care not to send any person who they did not think, from the evidence brought before them, would be likely to be convicted.

Mr. ASPLAND, Honorary Secretary of the Manchester and Salford Discharged Prisoners' Aid Society :

It appears to me that the sources of failure in this Bill will be three. In the first place, you will have the public, who will look upon it as a harsh and unreasonable Bill; then you will have the police, who are at present incompetent in almost every part of the country, to carry out its provisions; and the third difficulty will be with the magistrate himself. I have had conversation with different magistrates, and I firmly believe they will look at it as a harsh proceeding, and very few will act strictly up to the letter of this law. I believe it will fail through their feeling that they would be acting harshly. Thus you will have three distinct sources of failure, whereas, if Mr. Baker's suggestions are carried out, and these men are brought before a jury, that will tend to remove the feeling of harshness, because twelve men will sit to try the man, and no prejudice will be raised or brought to bear against the magistrate. It appears to me that, unless we still further improve the condition of our prison discipline, this Bill will also fail; because I am quite sure that, as we are at present, the prison discipline of this country is not deterrent to the criminals, who are most determined to resist authority, especially if the criminal be a woman. I maintain that this Bill will be to a certain extent a failure; and, as it has been very properly suggested by some of the previous speakers, will lead to a consideration of the whole question of prison discipline; at the same time I would make one remark, that the public will not approve of a criminal being imprisoned for twelve months without some plan of reformation being adopted.

Mr. AMOR, Superintendent of Maida Hill Refuge :

I have had the privilege of being connected with a large Ragged School in London, and an Industrial School, and also of becoming acquainted with the career of many criminals. I believe from what I have observed, that the police are totally unqualified to carry out the provisions of this Bill. I do strongly recommend to those who have the management of this Bill, that something should be done or said in favour of the poor criminal; it seems to me that all the intention of the Bill is entirely against him, and I do think before he is finally disposed of there should be some reformatory plan suggested, by which criminals shall have an opportunity of retrieving their character. I think it most desirable that these people should not be disposed of on the mere testimony of one policeman, and the private judgment of one magistrate, it is most essential that they should be committed to the Quarter Sessions, or otherwise, where they would have the verdict of a jury.

Mr. HONEYMAN, Glasgow Houses of Refuge :

One of the previous speakers has pointed out that a great deal of good is done by having attached to our prisons Industrial or Reformatory Homes. There is no doubt that unless persons convicted accept such a means for their reclamation they will certainly go down the hill, and will ultimately come to ruin. I regret to say that in Glasgow an unsuccessful effort was made of this kind on the voluntary principle. It failed because we felt that we needed more power to retain them, a more legislative hold upon them.

The Chairman, RIGHT HON. STEPHEN CAVE, M.P. :

There have been many difficulties pointed out in the discussion of this Bill, but at the same time I do not think it has been very readily shewn in what way they are to be avoided. It seems to me that in the discussion, (and I am not quite sure whether it is not in the Bill itself) there has been rather a confusion of ideas; of course everybody here, I imagine, fully approves of adult reformation. I know very well the excellent Institution mentioned by Lord Houghton, at Wakefield, and somewhat similar to that are the Discharged Prisoners' Aid Society, and the Discharged Prisoners' Relief Committee, in London; all those and many others are so many means of enabling the discharged prisoner to get an honest livelihood if he pleases, and the very fact that so many do so please, is proved by what Lord Houghton says, namely, that 80 per cent. of those who are thus helped, are, as far as we know, gaining an honest livelihood for the rest of their lives—I say that very fact shews that the prison discipline is not so bad as some of the speakers have imagined it to be. At the same time, there is no doubt a certain residuum who do not wish to lead an honest life at all; whether it is their fault, or whether it was the fault of society originally, we need not now stop to discuss, the fact is so, that there is a certain number of people turned every year out of prison, who are determined to prey upon society, and who, as far as any experiments hitherto made shew, are persons upon whom no adult reformatory or attempt at reformation seems to have any effect whatever. The object of the Bill appears to me to be to treat that class of offenders. The fact is, it is what has been called sometimes a specimen of legislation in a panic. There have been articles in the papers which have been perfectly warranted by facts, which shew that there is a large army of thieves preying upon society and determined to do so. Society naturally resents this, and the result is this Bill, which is intended to deprive these

Criminals of the power of preying on society any more. We heard one of the speakers talk about something being done for the poor criminals; no doubt all these Institutions which I have mentioned and the mere fact of our being here to-day, shews that a great deal is done for the poor criminals, but it must not be forgotten that under the best of circumstances the way of transgressors is hard, and so it ought to be, and I hope it always will be. Unless it is so, I am afraid our reformatory legislation will be rather apt to increase crime than to deter people from it, but those poor criminals, who I have no doubt were alluded to by the speaker, were those who are already provided for, (if not sufficiently at any rate in intention) who are willing to get an honest livelihood if they can; now I do not think the intention of the Bill is to meddle with them or to touch them. Then comes the question, is the Bill of such a nature as to be likely to carry out the object it has in view, and I must say that I rather agree with the strictures that have been passed upon it by many of the speakers. I think it goes too far, and I am afraid it will be rather liable to endanger what is really the proper object of the Bill, by attempting too much, particularly in this 10th clause. It is perfectly clear, anybody who knows the Agricultural Districts and the Agricultural community knows, that among the agricultural labouring classes petty pilfering is a very common thing, it goes on among men who have low ideas of morality and whose education has been of a low kind. No great disgrace is attached to a man who is detected in it, and therefore it is a totally different thing from that habitual crime to which we have been alluding. Men who are guilty of this petty pilfering do not intend to live upon, or to prey upon Society. In one sense, no doubt they are habitual criminals, but they are not living by crime, and that is the distinction between the two classes. To say then, that after a third offence, stealing oats or turnips, or a few potatoes, these men are to be consigned to seven years' penal servitude, appears to be monstrous. No doubt it does shew a criminal character and intention, being convicted three times, but we must take care that we are not confusing terms—the two things are totally distinct. No man in his senses would class these men among the habitual Garrotters or Burglars of a great town, so that I am afraid, (and I am not speaking my own opinion merely, but that of some of the Judges with whom I have talked on the subject), I am afraid if such a clause is passed without amendment it would be almost impossible to get the law carried into effect. I do not think we need now trouble ourselves very much with the matters of detail touched upon by various speakers, but as to the principle of the Bill which is to take away the power of really habitual criminals, those men who live by crime, to take away their power of preying upon society and doing worse mischief, that I think is most valuable, because, as Mr. Baker has stated, it is not only the depredations which they themselves commit, but it is that each one of these men is a nucleus around which gather the loose spirits among the young, whom they instruct and induce to become criminals themselves. If you can cut off one of these centres of crime you set free many of those who are rather of a weak than criminal character, and who, when the tempter is taken from them, will be open to better and more wholesome influences. I think the Bill must receive some amendment, but at the same time, there is nothing I should be so sorry for, as that the fact of its going rather too far, as it does in my opinion, should lead to its rejection altogether.

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BRUTAL ASSAULTS ON THE POLICE.

To the Editor of the *Telegraph* for 14th May.

In an able leader last Saturday, the *Telegraph* commented on the frequency of cases of brutal assault on the police. On To-day, immediately after the police tables were laid, showing 16 cases, 13 of which were for assaults on the police, generally endangering life, and mostly let off with an absolute month's imprisonment, the *Times* inserts the following letter:—

Sir,—After your excellent leader of this morning concerning the brutal assaults on the police, I am reflecting on the duty incumbent upon us to do something to check them for the future. The present means will be the most easy, the most just, and the most effectual. Surely, while we trust that, as a consequence of the case of brutal assault the utmost severity of the present law will be infested, we must have some other means to impose the present law and make it more efficient.

Some opportunity is now at hand if we promptly avail ourselves of it. The Habitual Criminals Bill has touched the subject, whether effectively or not is another question well worthy of our consideration at present. The 14th clause declares that for assault and battery on any constable in the execution of his duty the offender may be fined not exceeding 20*l.* or be imprisoned six months. This is good so far as it goes, and is available for slight assaults; but it does not touch the cases of serious mounting which, being manslaughter, and not felony, cannot receive a heavier sentence than five years' penal servitude, and a tenth offence cannot be more severely punished than a first.

Contrast this clause with other parts of the bill. If A. B. steals a loaf of bread after two, however slight, previous convictions, seven years' penal servitude is the best punishment he can receive. O'Neil, as mentioned in the *Telegraph* of Friday, has had at least three previous convictions, for one of which he has received four years' penal servitude, and now, for "beating and kicking a policeman till he is insensible," the utmost penalty the law will allow is five years!

You say that "the rough" has a brutal disregard as to the person or even life of a policeman. Who teaches "the rough" this disregard? Our laws, our magistrates, aye, and the public, including you and me, if we do not try to get the law and the practice altered.

While the Habitual Criminals Bill is yet before the House is surely the time to alter the 14th clause, and to make savage and brutal assaults on any person, but especially on policemen, punishable with at least as much severity as a trifling theft, and, above all, to adopt the cumulative system, and let a third offence meet a heavier punishment than a first.

But there is another deterrent well worthy of our consideration. I am by no means an advocate for flogging as a general remedy. I do not object to its pain, for pain must be feared, if men are to be deterred from evil; I do not object to its disgrace, because I hold that a man is more disgraced by the offence which has deserved the flogging than by the punishment itself; but I distrust it because it will not bear repetition. One severe flogging will often do much good to man or boy. A second is more likely to do harm. A third will, almost always, simply brutalize a man, and will not deter him. But though I object to flogging as a general remedy, it is useful as a sensational remedy to give a sudden check to a crime which is in fashion. I have little doubt that if it were enacted that any one brutally assaulting a policeman (of course I mean not merely giving an ordinary blow) should receive, if not previously convicted, six months' imprisonment and a flogging; if one previous conviction be proved, 12 months and a flogging; and if two previous convictions appear, not less than seven years' penal servitude, I have little doubt that the fashion of assaulting policemen would be checked within a month or two, and there would be less complaint of the difficulty of retaining men in the metropolitan service.

I hardly dare enter on the question whether we ought not to abolish that time-honoured institution, the nominal, most unreal, distinction between felony and misdemeanour. There was a time when the one was a slighter offence than the other. Now the distinction only exists to hamper our laws. If a man damages a cabbage in his neighbour's garden it is a misdemeanour, and I as a magistrate, sitting in my own study, have the irresponsible power of committing him to six months' hard labour, or, on a second conviction, to 12 months' ditto; but if he has stolen five shillings there must be two magistrates to punish him, and they can only give him three months; while if he have stolen 5*s.* 6*d.* he must be committed for trial at the Quarter Sessions, though for a misdemeanour of cutting a cabbage a single magistrate may inflict 12 months, while for half murdering a policeman the same punishment is deemed sufficient. How long are such things to last?

I am, Sir, your obedient servant,

T. B. L. BAKER.

Hardwicke Court, May 15th, 1869.

Mr. Congreve, of the Stafford constabulary, writes also to the *Times*:—"A beech of magistrates in petty sessions has summary power to award an imprisonment without the option of a fine for a period of two months for a common assault on a civilian. For an assault on a policeman in a borough the imprisonment is limited to one month; in the case of a county policeman it is the same as for a civilian—two months."



